IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

CENTRAL EXCISE APPEAL NO. 72 OF 2006.

Commissioner of Central Excise .. Appellant.
vs.
M/s Reliance Industries Ltd. .. Respondents.

Mr. P.S. Jetly with Mr. K.R. Chaudhary for the appellant.

Mr. Vikram Nankani with Mr.Ashwin Dave i/b Junnarkar & Associates for the respondents.

CORAM : V.C.DAGA & J.P.DEVADHAR,JJ.
DATED : 22.6 .2006.

P.C. :

. Heard rival parties.

2. In this appeal, following 3 substantial questions of law are raised:

.A Whether the declaration filed by the assessee on 7.7.1997 after the Notification No. 6/97-EX(NT) dated 1.3.1997 and ERRATA dated 9.4.1997 wrongly declaring the end use of the Chiller Package and components of the Chiller Package amounts to suppression?

.B Whether the Hon'ble CESTAT is correct in holding that the assessee is entitled to the MODVAT credit without appreciating the use of the Chiller Package and spares of the Chiller Package in spite of specific provision of Notification No.6/97-EX(NT) dated 1.3.1997 as amended?

.C Whether the Hon'ble CESTAT is justified in relying on the decision in the case of CCE. Goa vs. Prince Multiplast P. Ltd. (2004 (176) ELT 460) which is not germane to the facts of the present case?

3. The dispute in this appeal pertains to denial of credit on chillers brought in to the factory during the period from July, September and

December 1997 and used as capital goods.

4. The respondent availed the credit on chillers by filing a declaration on 7.7.1997. Show cause notice was issued for the above period in question on 27.2.2002 on the ground that the respondent had made wrong declaration. The Tribunal has recorded a finding that there was mutual mistake on both sides and filing of a wrong declaration cannot be said to be a deliberate suppression. Accordingly, the Tribunal held that the show cause notice issued by invoking the larger period of limitation cannot be sustained. This finding of fact recorded by the Tribunal cannot be faulted. Accordingly, the first question raised by the department cannot be said to be substantial question of law.

5. As regards question Nos. 2 & 3 are concerned, they are based on alternate submissions made by the respondent. Since the show cause notice itself was time barred, it is not necessary to consider the alternate submission made by the respondent.

6. In this view of the matter, we do not find any merit in this appeal and the same is dismissed in limine with no order as to costs.